

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MOSES PEREZ and DEE PEREZ,

Plaintiffs,

v.

Case No.

K&B TRANSPORTATION, INC., and KIARA WHARTON,

Defendants.

NOTICE OF REMOVAL

Defendants, K&B TRANSPORTATION, INC., and KIARA WHARTON (“Defendants”), through their attorneys, WILSON ELSER MOSKOWITZ EDELMAN & DICKER, LLP, remove this action from the Circuit Court of Cook County, Illinois, pursuant to 28 U.S.C. §§ 1332, 1441, and 1446. As grounds, Defendants state:

PROCEDURAL HISTORY

1. This is a personal injury action involving a January 20, 2015, collision between vehicles operated by Plaintiff Moses Perez and Defendant Kiara Wharton, resulting in alleged injury to Plaintiffs.

2. On January 17, 2017, Plaintiff filed a three-count complaint in the Circuit Court of Cook County, Illinois, Law Division, Case No. 2017 L 000544. (Exhibit A, Complaint at Law).

3. On January 23, 2017, Plaintiff filed a motion to appoint a Special Deputy to serve the summons and complaint on Defendants.

4. Summons was issued for Defendant K&B Transportation on January 27, 2017. (Exhibit B).

5. Summons was issued for Defendant Kiara Wharton on February 15, 2017. (Exhibit C).

6. Defendants filed their First Request for Admission to Plaintiffs on March 8, 2017. (Exhibit D).

7. Plaintiffs filed their Response to Defendants' First Request for Admission on March 28, 2017. (Exhibit E).

GROUND FOR REMOVAL

8. A defendant may remove any civil action brought in a State court for which the district courts of the United States have original jurisdiction to the federal district court encompassing the place in which the action is pending. 28 U.S.C. § 1441(a).

9. This Court has original jurisdiction over this action by reason of complete diversity of citizenship and an amount in controversy which exceeds the sum or value of \$75,000, exclusive of interests and costs. 28 U.S.C. § 1332(a).

THE PARTIES ARE OF DIVERSE CITIZENSHIP

10. Upon information and belief, Plaintiff Moses Perez is a citizen of the State of Illinois and was a citizen of the State of Illinois at the time of the accident.

11. Upon information and belief, Plaintiff Dee Perez is a citizen of the State of Illinois and was a citizen of the State of Illinois at the time of the accident.

12. Defendant Wharton is a citizen of the State of Texas.

13. At the time this action was commenced and since that time, Defendant K&B Transportation, Inc. is incorporated in the state of Iowa with its principal place of business in South Sioux City, Nebraska. (Exhibit F, K&B Transportation, Inc. Affidavit of Citizenship).

14. As such, complete diversity of citizenship exists pursuant to 28 U.S.C. § 1332.

See Wis. Dept or Correction v. Schacht, 524 U.S. 381, 388, 118 S. Ct. 2047, 2052 (1998);

Caterpillar Inc. v. Lewis, 519 U.S. 61, 65, 117 S. Ct. 467, 471 (1996).

AMOUNT IN CONTROVERSY IS SATISFIED

15. In Paragraph 1 of Defendants' First Request for Admission to Plaintiffs, defendants asked that Plaintiffs "Admit that your total alleged damages against Defendants, including but not limited to medical expenses, lost wages for both Plaintiffs, and all other costs, do not exceed \$75,000.00." (*See* Ex. D, ¶ 1).

16. In Paragraph 1 of Plaintiffs' Response to Defendants' First Request for Admission, Plaintiffs deny that their alleged damages against Defendants, including but not limited to medical expenses, lost wages for both Plaintiffs, and all other costs, do not exceed \$75,000.00. (*See* Ex. E, ¶ 1).

17. Therefore, the jurisdictional minimum of \$75,000.00 is clearly met given Plaintiffs' denial of their damages not exceeding \$75,000.00 pursuant to 28 U.S.C. § 1332.

THE STATUTORY REQUIREMENTS OF 28 U.S.C. § 1446 ARE SATISFIED

18. Defendants filed this Notice of Removal within thirty (30) days of receipt of Plaintiffs' Response to Defendants' First Request for Admission; therefore, this Notice of Removal is timely. 28 U.S.C. § 1446(b)(3).

19. This Court has diversity jurisdiction over this matter pursuant to 28 U.S.C. § 1332 (a)(1).

20. The State Court Action is properly subject to removal pursuant to 28 U.S.C. § 1332 (a)(1).

21. Defendants are filing, within this pleading, a copy of the Complaint and Summons served upon them in the state court action. 28 U.S.C. § 1446(a).

22. Promptly after filing this Notice of Removal, Defendants will provide written notice to all adverse parties of the filing, and a true and correct copy of this Notice of Removal will be filed with the Clerk of the Circuit Court of Cook County, Illinois, as required by 28 U.S.C. § 1446(d).

23. Defendants K&B Transportation, Inc. and Kiara Wharton all consent to the removal of this case to the Northern District of Illinois, which is evidenced by this jointly-filed removal. 28 U.S.C. § 1446(b)(2)(A).

24. By filing this Notice of Removal, Defendants K&B Transportation, Inc. and Kiara Wharton do not waive any available defenses, including all jurisdictional and affirmative defenses.

25. The undersigned counsel for the Defendants has read the foregoing and signed this Notice of Removal pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by 28 U.S.C. § 1446(a).

WHEREFORE, Defendants K&B Transportation, Inc. and Kiara Wharton hereby remove the instant action from the Circuit Court of Cook County, Illinois, to the United States District Court for the Northern District of Illinois, Eastern Division, and respectfully request that this Court exercise jurisdiction over this action.

Respectfully Submitted,

WILSON ELSER MOSKOWITZ EDELMAN & DICKER LLP

By: /s/ Kathleen McDonough

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Attorneys for K&B TRANSPORTATION, INC., and
KIARA WHARTON

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to Plaintiff's counsel via e-mail and Certified mail on this 5th day of April, 2017.

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